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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/043,908

01/11/2002

Robert Russo

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04/08/2003

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EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 04/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/043,908

Applicant(s)

RUSSO ET AL.

Examiner

James N Smalley

Art Unit

3727

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03/11/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-5, 12, 17, 20-23, 31 and 33-54 is/are allowed.
- 6) ☒ Claim(s) 1, 6-8, 14, 28-30 and 32 is/are rejected.
- 7) ☒ Claim(s) 9-11, 13, 15, 16, 18, 19 and 24-27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how the recess sidewall second portion can extend across a center portion of the top wall if it is downwardly depending.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 6-8, 28-30 and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Waller '390.

Waller '390 discloses a Lid for a Beverage Container comprising:

(cl. 1) a top wall having a generally circular periphery, an annular sidewall (28)

downwardly depending from the top wall periphery, the lid including a drinking opening/groove

(60) formed adjacent to the periphery, a regulator valve formed under the drinking opening, the regulator valve including: a first sidewall structure downwardly depending from the lid adjacent to the drinking opening and terminating in a first bottom wall, and a plurality of apertures/openings (20) formed in at least one of the first sidewall structure and the first bottom wall, wherein any of the plurality of apertures formed in the first sidewall structure are positioned in an opposing manner,

(cl. 7) wherein the drinking opening is formed in the top wall,

(cl. 8) wherein the annular sidewall includes an annular recess for receiving a rim of the cup in a liquid tight manner.

Regarding claims 28-30 and 32, Waller '390 discloses a Lid for a Beverage Container comprising:

a top wall having a generally circular periphery, an annular sidewall (28) downwardly depending from the top wall periphery, the lid including a drinking opening/groove (60) formed adjacent to the periphery, a regulator valve formed under the drinking opening, the regulator valve including:

a sidewall structure downwardly depending from the lid adjacent the drinking opening, and a plurality of apertures formed in the sidewall structure and positioned thereon in an opposing manner,

(cl. 29) a wave-breaker recess formed in the top wall having a sidewall that extends downwardly, wherein the wave-breaker recess sidewall includes a first portion facing toward the regulator valve and a second portion facing away from the regulator valve, and wherein the

recess sidewall second portion is non-linear for reflecting waves of the liquid away from the regulator valve,

(cl. 30) wherein the wave-breaker recess sidewall first portion faces but is separated from the annular sidewall to form a channel therebetween, and wherein the regulator valve is disposed in the channel,

(cl. 32) wherein the wave-breaker recess extends downwardly further from the periphery than does the regulator valve.

(Examiner notes the first face reads as the portion of the sidewall that is closest to and adjacent to the regulator valve. This sidewall first portion faces the annular sidewall looking through the regulator valve, thereby creating a channel wherein the regulator valve is disposed therebetween.)

Response to Arguments

5. Applicant's arguments filed 03/11/03 have been fully considered but they are not persuasive.

Examiner notes the apertures of Waller '390 clearly read on the limitations of claim 1 of the present invention.

The following is a quotation of the applicant's submission of the definition of the word opposite:

“2. Facing the other way; moving or tending away from each other: *opposite directions.*”

Examiner notes that the apertures of Waller '390 oppose each other because they are formed on opposite ends of the curved sidewall. If the segment of the sidewall in which the apertures are formed were to be bisected with an imaginary boundary line such that the sidewall segment would be divided in two equal portions, the apertures on either side of the imaginary line would be on opposite sides of such a line, extending in, "opposite directions," from each other, and would, thus, oppose each other.

Further, the examiner would like to clarify the original statement that the openings/apertures of Waller '390 are disposed along a curved surface, and they therefore oppose each other. The most extreme example would be apertures diametrically disposed.

According to <http://www.yourdictionary.com>, the definition of the word, "Diametrical," is:

1. Of, relating to, or along a diameter.
2. Exactly opposite; contrary.

Further, the definition, from the same source, for "Exact" is:

- "2. Characterized by accurate measurements or inferences with small margins of error; not approximate."

Diametrical opposition of apertures formed along a curved surface implies exact opposition with "small margins of error." Placing apertures along a curved surface that are less than diametrically opposed to each other (separated by less than 180 degrees of the arc segment on which they are disposed), for example those of Waller '390, according to the definitions cited above, still implies some level of opposition between apertures, or "approximate opposition."

Allowable Subject Matter

6. Claims 2-5, 12, 17, 20-23, 31 and 33-54 are allowed.
7. Claims 9-11, 13, 15, 16, 18, 19 and 24-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information

Art Unit: 3727

without contacting the examiners”, M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 8-5:30, Alternate Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Other helpful telephone numbers are listed for applicant’s benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

Application/Control Number: 10/043,908

Page 8

Art Unit: 3727

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line
Internet PTO-Home Page

1-800-786-9199
<http://www.uspto.gov/>

jns
March 26, 2003



Stephen K. Cronin
Primary Examiner